

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on March 26, 2001
at 5:10 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Stanley Fisher (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 57; SB 319; HB 632

EXECUTIVE ACTION ON SB 632

Motion: REP. MOOD moved that HB 632 DO PASS.

Motion: REP. MOOD moved AMENDMENTS.

Discussion:

REP. MOOD stated that the amendment is to address some coordination problems in the bill as it was presented. There were some concerns that the default suppliers had about whether or not generation was included in the transition regulation of the PSC. He feels that these amendments are addressing those things and still staying within the spirit of the bill.

Mr. Maly explained the amendments. **EXHIBIT(feh68a01)**

REP. DELL added that it needs to be added, as long as it doesn't disrupt the major cost for everybody. Is there something in this bill that addresses that? Mr. Maly said that may be in another set of amendments.

REP. OLSON asked who determines just and reasonable rates.

REP. MOOD said that phrase had been used extensively throughout the utility regulation business. It is used across the nation. It is defined as taking into consideration those factors that are defined there. There has been conversation about just and reasonable because there is equal language within the California statutes. He would submit that there are adequate protections in the bill as written to ensure that that doesn't take place in Montana.

REP. SCHMIDT asked for clarification. Mr. Maly said that the earlier language was too vague and would be different for each large customer who was in the situation of being unable to afford the power. Under the amendments, the commission is now burdened with the task of determining what a lifeline rate is.

REP. FORRESTER clarified that we are going to use the lifeline rates, how does the PSC determine just and reasonable. Are there going to be a bunch of different rates that will be lifeline rates, or will there be one set rate? REP. MOOD replied that there will be one lifeline rate with the changes in the amendments. REP. FORRESTER further clarified that the lifeline rate can't be more than 150% of the present rate. REP. MOOD said that was correct. REP. FORRESTER then asked for the actual lifeline rate using the 2.5. REP. MOOD said that it would be 33.37. REP. FORRESTER said that this would be the rate.

REP. MOOD said that it would be until next November.

Mr. Maly cautioned that he wasn't certain that the rate that a large industrial customer is paying today, under regulation, is 2.23 cents. There may be some confusion between the buy-back price that MPC pays PPL for the power, and the rate that MPC customers pay.

REP. FORRESTER asked how many megawatts are needed for the large industrials to get back on line. **Mr. Corcoran** said that there is little known about that, but it has been talked about at the Governor's Advisory Committee. It could be in the range of 100 to 170 or more. He added that the 2.225 cents is only one portion of the power supply that is used to serve the customers that remain on their system today. There are additional costs related to that. For a large industrial customer, it leans more toward 2.6 cents. This is the price that the commission sets for consumers. **REP. FORRESTER** said that, if you are looking at the 200 megawatt range for large industrials to come back on-line, where is MPC going to come up with 200 megawatts of power priced at approximately 4 cents. **Mr. Corcoran** said that we need to be careful to disconnect the rate side from the power side. You can set the rate side easily, but the power has to be purchased from the market place at a very expensive price. Right now the default supplier is caught in the middle of that equation. He is not sure that this bill will take care of that problem.

REP. FORRESTER asked if lifeline rates will work for MPC.

Mr. Corcoran said that it is unclear where the power is going to come from and how much it is going to cost.

REP. ROY BROWN commented that we can set the rates at anything we want, but if the default supplier can't get it for that price they shouldn't be at risk. They should be a pass-through. Will these amendments solve that problem? **REP. MOOD** said we are at the crux of the problem and that is, has PPL been deregulated to the point where they are a separate entity? What this bill does is give legislative recognition to the assertion that the PSC continues to have the power to regulate the generation of electricity that PPL bought from MPC. That is the source of the electricity at the lifeline rate. **REP. BROWN** continues, assuming that is true, then MPC, as the default supplier, could get it for that rate from PPL, assuming they have that power available, and pass it through to the large industrials. **REP. MOOD** said that was his understanding.

REP. SCHIMDT asked, who says PPL is going to sell it for that rate? **REP. MOOD** said that the PSC says. We all know that this is going to end up in court, but the language in 390 contains two

sections of law that dealt with the problems that were anticipated in 1997. He referred to page 7, line 30. They are anticipating that there will be an extension. He then referred to page 11, line 25. **Mr. Maly** commented that by changing the definition of public utility to include specifically the successors and assignees to MPC, that is another way of saying affiliates of supplier. The problem with the existing law is that one could argue that MPC no longer has an affiliate supplier, so the only option available is to go to market and recover costs from the market. That doesn't provide the protection to the customers that this bill will.

REP. DELL called for the question.

Motion/Vote: **REP. MOOD** moved that **AMENDMENT TO HB 632 BE ADOPTED.**
Motion carried unanimously.

Motion: **REP. MOOD** moved that **HB 632 DO PASS AS AMENDED.**

Discussion:

REP. STORY had asked **REP. GILLAN** at a previous tax hearing if we take a risk in the expected litigation by going into the statute at this point in time and trying to clarify what we meant.

REP. MOOD responded that his bill strikes some of the original language, which will remain intact in the history record. He thinks that you are probably better off to leave the language intact as it is in the original so that it can be interpreted that way. His bill doesn't change that.

REP FORRESTER asked a question of Jerry Anderson. The assertion is that PPL is going to continue to furnish power and it is going to be forced off at a lifeline rate of 3.9 cents per kilowatt hour. Is that correct? **Mr. Anderson** said that his understanding was that the lifeline rate would be charged by the MPC, not PPL. It seems to him that one of the things that is missing in consideration of this is that they can't meet below the requirements of the MPC contract on a continuing basis.

REP. FORRESTER asked if it was correct to assume that PPL will have to be a partner in this and shoulder some of the responsibility in providing power to the large industrial customers. **Mr. Anderson** said that they bear that responsibility today with industrials that stayed on the system. He doesn't believe that the PSC could force them to provide more power than they are capable of producing.

REP. FORRESTER asked if Mr. Corcoran interpreted this bill to mean that MPC will have to provide the power for the lifeline

rate. **Mr. Corcoran** had not found the language in this bill that clearly identifies the power should come from somebody other than MPC. **REP. FORRESTER** asked, if they were forced to provide a lifeline rate of 3.9 cents per kilowatt hour, what kind of financial obligation will be incurred. **Mr. Corcoran** said that it would depend on what they would have to pay for the power. They would likely be paying high prices in the market place and only recover the low revenues. It would immediately wipe-out any profits.

REP. DEE BROWN clarified that on page 13, section 8, they had talked about the end of the transition period being 2004. What does that mean, that we will terminate this at 2001? **Mr. Maly** said that it only applied to the first section of the bill, which is the tax credit.

REP. MATTHEWS said that if it is a 1 cent increase, it is \$14 million. **REP. DEE BROWN** said that was correct.

REP. DELL said that the PSC has made it known that there are certain things that they really need to have the ability to address. There are a lot of the concerns that we are dealing with right now. One of them is the opportunity to charge exit fees to large users. They also wanted to have the option of saying no if there were new users that came into the system that needed such a huge load that it would disrupt everything.

REP. MOOD responded that it was his concern that they leave enough flexibility in what they do here so that the PSC can do exactly what **REP. DELL** had mentioned. It is difficult for him to believe that a company that bought a series of assets, anticipating that the price of electricity was going to be 20 - 24 cents would be thrown into the throes of apoplexy and economic starvation if we tell them that the price is 39 cents. He feels that there is something else in play here.

REP. STORY said that there are still some concerns in this bill. It concerns him that there is some possibility that, if things don't work out right, the distributor could be caught in the middle of the process. He hopes that there would be a back door in here to prevent a distribution company from getting caught in a California-type situation. If, in the end, we kill both the economy and the distribution system, we aren't going to be better off.

REP. DELL said that he is going to support this bill. Something that he finds encouraging about it is that one of the amendments allows the PSC to immediately adjust rates upward in the public

interest. That is encouraging because it doesn't sound like it is setting us up for a California scenario.

REP. STORY asked, assuming that the PSC starts raising rates, who gets the money? **REP. MOOD** said that it is his understanding that the PSC would have the authority to put the additional revenue into an escrow account and hold that money until some later date. **REP. STORY** asked if that was in this bill. **REP. MOOD** said that it is not. The decision is up to the PSC.

REP. ROY BROWN said that it seems to him that if we want MPC to only be a pass-through company and they don't get any risk, the opposite ought to be true, if there are additional funds from what the PSC does, it ought to go back to the generators.

REP. SCHMIDT asked if this escrow account is in any bill. **Mr. Maly** said that there were 2 or 3 other bills in the process that do set up a process by which the PSC can take and hold money and dispense of it at a later time. There is not a uniform mechanism as of yet.

REP. DEE BROWN called for the question.

Motion/Vote: **REP. MOOD** moved that **HB 632 DO PASS AS AMENDED**. Motion carried 9-3 with Forrester, Matthews, and Schmidt voting no.

EXECUTIVE ACTION ON SB 319

Motion: **REP. BROWN** moved that **SB 319 BE CONCURRED IN**.

Discussion:

REP. DEE BROWN reminded the committee that there were 21 proponents and only 7 opponents at the hearing for this bill.

Motion: **REP. FORRESTER** moved that **AMENDMENTS TO SB 319 BE ADOPTED**.

Discussion:

REP. FORRESTER explained the amendments. **EXHIBIT(feh68a02)**

REP. DELL said that there is talk about how this will actually make it easier to build transmission lines. **REP. FORRESTER**

doesn't see how it would. It left transmission lines as part of the Major Facility Sighting Act.

REP. STORY commented that it is a good idea to put an amendment on this.

REP. FORRESTER said that this will be decided in a free conference committee and will be a major piece of legislation.

REP. OLSON said that we do need an amendment, but he would rather it be a different amendment than this one. **REP. FORRESTER** disagreed. This amendment needs to go on the bill.

REP. FORRESTER called for the question.

Motion/Vote: **REP. FORRESTER** moved that **AMENDMENT TO SB 319 BE ADOPTED**. Motion carried 11-1 with Olson voting no.

Motion/Vote: **REP. DELL** moved that **SB 319 BE CONCURRED IN AS AMENDED**. Motion carried 11-1 with Juneau voting no.

Motion/Vote: **REP. DELL** moved to bring SB 57 off the table. Motion carried 6-5 with Curtiss, Matthews, Mood, Olson, and Story voting no.

Motion: **REP. DELL** moved that **AMENDMENT TO SB 57 BE ADOPTED**.

Discussion:

REP. DELL explained the amendments. **EXHIBIT(feh68a03)**

REP. ROY BROWN said that he agreed to take this off the table, but he is unsure that he agrees with the amendment. We need to do some action on this now so that we can keep this in effect. There was testimony from the PSC that said that they didn't think it was a good idea to change that to 2.4%.

REP. MOOD said that the PSC had said that they are uncomfortable with language like "a minimum of." They want guidelines, not open-ended statements.

REP. STORY would oppose the amendment. 2.4% is what they can pass through in the rates, as he understands it. If we raise this to a minimum of and a utility decides to go and spend more on something else, they can do that and apply to the PSC for inclusion of that in the rates. This is just a philosophy thing, if you want to allow the companies to pass it through in rates.

REP. DELL said that the Governor's Council on Energy Policy has unanimously recommended that this level be allowed to increase above the 2.4% funding level. He doesn't see why the PSC would be threatened by this because they would have final approval on it.

Motion/Vote: **REP. DELL** moved **AMENDMENT TO SB 57**. **Motion failed with Dell, Juneau, and Schmidt voting aye.**

REP. DELL said that we are not the only players in this. The TAC committee recommended this move forward. The PSC recommends increased funding in the universal systems benefits. The people who have looked at this closely are in support of this.

REP. MATTHEWS said that he won't oppose this because Energy Share had talked to him. They were wanting a six month extension. Did the TAC committee check on the funding levels of the surrounding states? **Mr. Maly** said that there was repeated reference to the Council of the Governors in the northwest that came forth in 1996 and recommended that this amount be 3%, rather than 2.4%. He believes Montana was the only one of the four northwest states to go forward with a less than 3% spending level.

REP. MATTHEWS said that Energy Share is a good program. All of these programs need to be studied by the TAC committee.

REP. DELL said that this is Senator Johnson's bill and he is resistant to six months on it. This is a proactive bill. Energy efficiency programs pay for themselves.

REP. MOOD said that only 3% of the electricity consumed by the western states is consumed in Montana. Any impact we are going to have into research for energy conservation will be small. There is not enough money to be spending money on those kinds of projects. He is in favor of increasing the amount of USB that goes to low income people and eliminating the pretense of studying conservation. He is offended to find out that they have given money to an environmentalist so that he can subsidize solar panels on his house. If they are going to use the money in that irresponsible way, it is difficult for him to support this program.

Motion/Vote: **REP. DELL** moved that **SB 57 BE CONCURRED IN**. **Motion carried 7-4 with Curtiss, Matthews, McKenney, and Olson voting no.**

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ADJOURNMENT

Adjournment: 6:30 P.M.

REP. AUBYN A. CURTISS, Chairman

, Secretary

AC/

EXHIBIT (feh68aad)